



Reprinted
March 24, 2009

ENGROSSED SENATE BILL No. 486

DIGEST OF SB 486 (Updated March 23, 2009 4:30 pm - DI 96)

Citations Affected: IC 5-10; IC 20-26; IC 22-3; IC 27-1; IC 27-14; IC 27-15; noncode.

Synopsis: Various insurance, worker's compensation, and study committee matters. Requires certain group health plans available to certain police employees of the state to provide coverage for pervasive developmental disorders. Allows a school corporation to provide coverage for employees of the school corporation through a state employee health plan. Provides that municipalities may form a mutual insurance company to insure municipalities. Provides that for purposes of worker's compensation, an officer of a corporation who is the sole officer of the corporation: (1) is not an employee of the corporation; but (2) may elect to be an employee of the corporation. Makes technical corrections. Establishes the interim study committee on motor vehicle towing.

Effective: Upon passage; January 1, 2009 (retroactive); July 1, 2009.

**Paul, Simpson, Charbonneau,
Young R Michael, Randolph**
(HOUSE SPONSOR — FRY)

January 15, 2009, read first time and referred to Committee on Insurance and Financial Institutions.

February 19, 2009, reported favorably — Do Pass.

February 23, 2009, read second time, ordered engrossed. Engrossed.

February 24, 2009, read third time, passed. Yeas 43, nays 7.

HOUSE ACTION

March 3, 2009, read first time and referred to Committee on Insurance.

March 19, 2009, amended, reported — Do Pass.

March 23, 2009, read second time, amended, ordered engrossed.

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ES 486—LS 7460/DI 97+



First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 486

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-10-8-2.2, AS AMENDED BY P.L.3-2008,
2 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 2.2. (a) As used in this section, "dependent"
4 means a natural child, stepchild, or adopted child of a public safety
5 employee who:
6 (1) is less than eighteen (18) years of age;
7 (2) is at least eighteen (18) years of age and has a physical or
8 mental disability (using disability guidelines established by the
9 Social Security Administration); or
10 (3) is at least eighteen (18) and less than twenty-three (23) years
11 of age and is enrolled in and regularly attending a secondary
12 school or is a full-time student at an accredited college or
13 university.
14 (b) As used in this section, "public safety employee" means a
15 full-time firefighter, police officer, county police officer, or sheriff.
16 (c) This section applies only to local unit public employers and their
17 public safety employees.

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(d) A local unit public employer may provide programs of group health insurance for its active and retired public safety employees through one (1) of the following methods:

- (1) By purchasing policies of group insurance.
- (2) By establishing self-insurance programs.
- (3) By electing to participate in the local unit group of local units that offer the state employee health plan under section 6.6 of this chapter.

(4) If the local unit public employer is a school corporation, by electing to provide the coverage through a state employee health plan under section 6.7 of this chapter.

A local unit public employer may provide programs of group insurance other than group health insurance for the local unit public employer's active and retired public safety employees by purchasing policies of group insurance and by establishing self-insurance programs. However, the establishment of a self-insurance program is subject to the approval of the unit's fiscal body.

(e) A local unit public employer may pay a part of the cost of group insurance for its active and retired public safety employees. However, a local unit public employer that provides group life insurance for its active and retired public safety employees shall pay a part of the cost of that insurance.

(f) A local unit public employer may not cancel an insurance contract under this section during the policy term of the contract.

(g) After June 30, 1989, a local unit public employer that provides a group health insurance program for its active public safety employees shall also provide a group health insurance program to the following persons:

- (1) Retired public safety employees.
- (2) Public safety employees who are receiving disability benefits under IC 36-8-6, IC 36-8-7, IC 36-8-7.5, IC 36-8-8, or IC 36-8-10.
- (3) Surviving spouses and dependents of public safety employees who die while in active service or after retirement.

(h) A public safety employee who is retired or has a disability and is eligible for group health insurance coverage under subsection (g)(1) or (g)(2):

- (1) may elect to have the person's spouse, dependents, or spouse and dependents covered under the group health insurance program at the time the person retires or becomes disabled;
- (2) must file a written request for insurance coverage with the employer within ninety (90) days after the person retires or begins receiving disability benefits; and

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(3) must pay an amount equal to the total of the employer's and the employee's premiums for the group health insurance for an active public safety employee (however, the employer may elect to pay any part of the person's premiums).

(i) Except as provided in IC 36-8-6-9.7(f), IC 36-8-6-10.1(h), IC 36-8-7-12.3(g), IC 36-8-7-12.4(j), IC 36-8-7.5-13.7(h), IC 36-8-7.5-14.1(i), IC 36-8-8-13.9(d), IC 36-8-8-14.1(h), and IC 36-8-10-16.5 for a surviving spouse or dependent of a public safety employee who dies in the line of duty, a surviving spouse or dependent who is eligible for group health insurance under subsection (g)(3):

(1) may elect to continue coverage under the group health insurance program after the death of the public safety employee;

(2) must file a written request for insurance coverage with the employer within ninety (90) days after the death of the public safety employee; and

(3) must pay the amount that the public safety employee would have been required to pay under this section for coverage selected by the surviving spouse or dependent (however, the employer may elect to pay any part of the surviving spouse's or dependents' premiums).

(j) The eligibility for group health insurance under this section for a public safety employee who is retired or has a disability ends on the earlier of the following:

(1) When the public safety employee becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.

(2) When the employer terminates the health insurance program for active public safety employees.

(k) A surviving spouse's eligibility for group health insurance under this section ends on the earliest of the following:

(1) When the surviving spouse becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.

(2) When the unit providing the insurance terminates the health insurance program for active public safety employees.

(3) The date of the surviving spouse's remarriage.

(4) When health insurance becomes available to the surviving spouse through employment.

(l) A dependent's eligibility for group health insurance under this section ends on the earliest of the following:

(1) When the dependent becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.

(2) When the unit providing the insurance terminates the health insurance program for active public safety employees.

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(3) When the dependent no longer meets the criteria set forth in subsection (a).

(4) When health insurance becomes available to the dependent through employment.

(m) A public safety employee who is on leave without pay is entitled to participate for ninety (90) days in any group health insurance program maintained by the local unit public employer for active public safety employees if the public safety employee pays an amount equal to the total of the employer's and the employee's premiums for the insurance. However, the employer may pay all or part of the employer's premium for the insurance.

(n) A local unit public employer may provide group health insurance for retired public safety employees or their spouses not covered by subsections (g) through (l) and may provide group health insurance that contains provisions more favorable to retired public safety employees and their spouses than required by subsections (g) through (l). A local unit public employer may provide group health insurance to a public safety employee who is on leave without pay for a longer period than required by subsection (m), and may continue to pay all or a part of the employer's premium for the insurance while the employee is on leave without pay.

SECTION 2. IC 5-10-8-2.6, AS AMENDED BY P.L.1-2005, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.6. (a) This section applies only to local unit public employers and their employees. This section does not apply to public safety employees, surviving spouses, and dependents covered by section 2.2 of this chapter.

(b) A public employer may provide programs of group insurance for its employees and retired employees. The public employer may, however, exclude part-time employees and persons who provide services to the unit under contract from any group insurance coverage that the public employer provides to the employer's full-time employees. A public employer may provide programs of group health insurance under this section through one (1) of the following methods:

(1) By purchasing policies of group insurance.

(2) By establishing self-insurance programs.

(3) By electing to participate in the local unit group of local units that offer the state employee health plan under section 6.6 of this chapter.

(4) If the local unit public employer is a school corporation, by electing to provide the coverage through a state employee health plan under section 6.7 of this chapter.

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1 A public employer may provide programs of group insurance other
 2 than group health insurance under this section by purchasing policies
 3 of group insurance and by establishing self-insurance programs.
 4 However, the establishment of a self-insurance program is subject to
 5 the approval of the unit's fiscal body.

6 (c) A public employer may pay a part of the cost of group insurance,
 7 but shall pay a part of the cost of group life insurance for local
 8 employees. A public employer may pay, as supplemental wages, an
 9 amount equal to the deductible portion of group health insurance as
 10 long as payment of the supplemental wages will not result in the
 11 payment of the total cost of the insurance by the public employer.

12 (d) An insurance contract for local employees under this section
 13 may not be canceled by the public employer during the policy term of
 14 the contract.

15 (e) After June 30, 1986, a public employer shall provide a group
 16 health insurance program under subsection (g) to each retired
 17 employee:

18 (1) whose retirement date is:

19 (A) after May 31, 1986, for a retired employee who was a
 20 teacher (as defined in IC 20-18-2-22) for a school corporation;
 21 or

22 (B) after June 30, 1986, for a retired employee not covered by
 23 clause (A);

24 (2) who will have reached fifty-five (55) years of age on or before
 25 the employee's retirement date but who will not be eligible on that
 26 date for Medicare coverage as prescribed by 42 U.S.C. 1395 et
 27 seq.;

28 (3) who will have completed twenty (20) years of creditable
 29 employment with a public employer on or before the employee's
 30 retirement date, ten (10) years of which must have been
 31 completed immediately preceding the retirement date; and

32 (4) who will have completed at least fifteen (15) years of
 33 participation in the retirement plan of which the employee is a
 34 member on or before the employee's retirement date.

35 (f) A group health insurance program required by subsection (e)
 36 must be equal in coverage to that offered active employees and must
 37 permit the retired employee to participate if the retired employee pays
 38 an amount equal to the total of the employer's and the employee's
 39 premiums for the group health insurance for an active employee and if
 40 the employee, within ninety (90) days after the employee's retirement
 41 date, files a written request with the employer for insurance coverage.
 42 However, the employer may elect to pay any part of the retired

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employee's premiums.

(g) A retired employee's eligibility to continue insurance under subsection (e) ends when the employee becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq., or when the employer terminates the health insurance program. A retired employee who is eligible for insurance coverage under subsection (e) may elect to have the employee's spouse covered under the health insurance program at the time the employee retires. If a retired employee's spouse pays the amount the retired employee would have been required to pay for coverage selected by the spouse, the spouse's subsequent eligibility to continue insurance under this section is not affected by the death of the retired employee. The surviving spouse's eligibility ends on the earliest of the following:

- (1) When the spouse becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.
- (2) When the employer terminates the health insurance program.
- (3) Two (2) years after the date of the employee's death.
- (4) The date of the spouse's remarriage.

(h) This subsection does not apply to an employee who is entitled to group insurance coverage under IC 20-28-10-2(b). An employee who is on leave without pay is entitled to participate for ninety (90) days in any group health insurance program maintained by the public employer for active employees if the employee pays an amount equal to the total of the employer's and the employee's premiums for the insurance. However, the employer may pay all or part of the employer's premium for the insurance.

(i) A public employer may provide group health insurance for retired employees or their spouses not covered by subsections (e) through (g) and may provide group health insurance that contains provisions more favorable to retired employees and their spouses than required by subsections (e) through (g). A public employer may provide group health insurance to an employee who is on leave without pay for a longer period than required by subsection (h), and may continue to pay all or a part of the employer's premium for the insurance while the employee is on leave without pay.

SECTION 3. IC 5-10-8-6.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]: **Sec. 6.3. (a) As used in this section, "covered individual" means an individual who is covered under a group health insurance plan.**

(b) As used in this section, "group health insurance plan" means a plan described in section 6 of this chapter that provides coverage

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for basic health care services (as defined in IC 27-13-1-4).

(c) As used in this section, "pervasive developmental disorder" means a neurological condition, including Asperger's syndrome and autism, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(d) A group health insurance plan must provide a covered individual with coverage for the treatment of a pervasive developmental disorder. Coverage provided under this section is limited to treatment that is prescribed by the covered individual's treating physician in accordance with a treatment plan. A group health insurance plan may not deny or refuse to issue coverage on, refuse to contract with, or refuse to renew, refuse to reissue, or otherwise terminate or restrict coverage on, an individual under the group health coverage plan solely because the individual is diagnosed with a pervasive developmental disorder.

(e) The coverage required by subsection (d) may not be subject to dollar limits, deductibles, copayments, or coinsurance provisions that are less favorable to a covered individual than the dollar limits, deductibles, copayments, or coinsurance provisions that apply to physical illness generally under the group health insurance plan.

SECTION 4. IC 5-10-8-6.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6.7. (a) As used in this section, "state employee health plan" means a:

- (1) self-insurance program established under section 7(b) of this chapter; or
- (2) contract with a prepaid health care delivery plan entered into under section 7(c) of this chapter;

to provide group health coverage for state employees.

(b) The state personnel department shall allow a school corporation to elect to provide coverage of health care services for active and retired employees of the school corporation under a state employee health plan.

(c) The following apply if a school corporation elects to provide coverage for active and retired employees of the school corporation under subsection (b):

- (1) The state shall not pay any part of the cost of the coverage.
- (2) The coverage provided to an active or retired school corporation employee under this section must be the same as the coverage provided to an active or retired state employee

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under the state employee health plan.

(3) Notwithstanding sections 2.2 and 2.6 of this chapter:

(A) the school corporation shall pay for the coverage provided to an active or retired school corporation employee under this section an amount equal to the amount paid by the state for coverage provided to an active or retired state employee under the state employee health plan; and

(B) an active or retired school corporation employee shall pay for the coverage provided to the active or retired school corporation employee under this section an amount equal to the amount paid by an active or retired state employee for coverage provided to the active or retired state employee under the state employee health plan.

(4) The school corporation shall pay any administrative costs of the school corporation's participation in the state employee health plan.

(5) The school corporation shall provide the coverage elected under subsection (b) for a period of at least three (3) years beginning on the date the coverage of the school corporation employees under the state employee health plan begins.

(d) The state personnel department shall provide an enrollment period at least every thirty (30) days for a school corporation that elects to provide coverage under subsection (b).

(e) The state personnel department may adopt rules under IC 4-22-2 to implement this section.

(f) Neither this section nor a school corporation's election to participate in a state employee health plan as provided in this section impairs the rights of an exclusive representative of the certificated or noncertificated employees of the school corporation to collectively bargain all matters related to school employee health insurance programs and benefits.

SECTION 5. IC 20-26-5-4, AS AMENDED BY P.L.168-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. In carrying out the school purposes of a school corporation, the governing body acting on the school corporation's behalf has the following specific powers:

(1) In the name of the school corporation, to sue and be sued and to enter into contracts in matters permitted by applicable law.

(2) To take charge of, manage, and conduct the educational affairs of the school corporation and to establish, locate, and provide the necessary schools, school libraries, other libraries where

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permitted by law, other buildings, facilities, property, and equipment.

(3) To appropriate from the school corporation's general fund an amount, not to exceed the greater of three thousand dollars (\$3,000) per budget year or one dollar (\$1) per pupil, not to exceed twelve thousand five hundred dollars (\$12,500), based on the school corporation's previous year's ADM, to promote the best interests of the school corporation through:

(A) the purchase of meals, decorations, memorabilia, or awards;

(B) provision for expenses incurred in interviewing job applicants; or

(C) developing relations with other governmental units.

(4) To:

(A) Acquire, construct, erect, maintain, hold, and contract for construction, erection, or maintenance of real estate, real estate improvements, or an interest in real estate or real estate improvements, as the governing body considers necessary for school purposes, including buildings, parts of buildings, additions to buildings, rooms, gymnasiums, auditoriums, playgrounds, playing and athletic fields, facilities for physical training, buildings for administrative, office, warehouse, repair activities, or housing school owned buses, landscaping, walks, drives, parking areas, roadways, easements and facilities for power, sewer, water, roadway, access, storm and surface water, drinking water, gas, electricity, other utilities and similar purposes, by purchase, either outright for cash (or under conditional sales or purchase money contracts providing for a retention of a security interest by the seller until payment is made or by notes where the contract, security retention, or note is permitted by applicable law), by exchange, by gift, by devise, by eminent domain, by lease with or without option to purchase, or by lease under IC 20-47-2, IC 20-47-3, or IC 20-47-5.

(B) Repair, remodel, remove, or demolish, or to contract for the repair, remodeling, removal, or demolition of the real estate, real estate improvements, or interest in the real estate or real estate improvements, as the governing body considers necessary for school purposes.

(C) Provide for conservation measures through utility efficiency programs or under a guaranteed savings contract as described in IC 36-1-12.5.

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(5) To acquire personal property or an interest in personal property as the governing body considers necessary for school purposes, including buses, motor vehicles, equipment, apparatus, appliances, books, furniture, and supplies, either by cash purchase or under conditional sales or purchase money contracts providing for a security interest by the seller until payment is made or by notes where the contract, security, retention, or note is permitted by applicable law, by gift, by devise, by loan, or by lease with or without option to purchase and to repair, remodel, remove, relocate, and demolish the personal property. All purchases and contracts specified under the powers authorized under subdivision (4) and this subdivision are subject solely to applicable law relating to purchases and contracting by municipal corporations in general and to the supervisory control of state agencies as provided in section 6 of this chapter.

(6) To sell or exchange real or personal property or interest in real or personal property that, in the opinion of the governing body, is not necessary for school purposes, in accordance with IC 20-26-7, to demolish or otherwise dispose of the property if, in the opinion of the governing body, the property is not necessary for school purposes and is worthless, and to pay the expenses for the demolition or disposition.

(7) To lease any school property for a rental that the governing body considers reasonable or to permit the free use of school property for:

(A) civic or public purposes; or

(B) the operation of a school age child care program for children who are at least five (5) years of age and less than fifteen (15) years of age that operates before or after the school day, or both, and during periods when school is not in session; if the property is not needed for school purposes. Under this subdivision, the governing body may enter into a long term lease with a nonprofit corporation, community service organization, or other governmental entity, if the corporation, organization, or other governmental entity will use the property to be leased for civic or public purposes or for a school age child care program. However, if payment for the property subject to a long term lease is made from money in the school corporation's debt service fund, all proceeds from the long term lease must be deposited in the school corporation's debt service fund so long as payment for the property has not been made. The governing body may, at the governing body's option, use the procedure specified in

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IC 36-1-11-10 in leasing property under this subdivision.

(8) To:

(A) Employ, contract for, and discharge superintendents, supervisors, principals, teachers, librarians, athletic coaches (whether or not they are otherwise employed by the school corporation and whether or not they are licensed under IC 20-28-5), business managers, superintendents of buildings and grounds, janitors, engineers, architects, physicians, dentists, nurses, accountants, teacher aides performing noninstructional duties, educational and other professional consultants, data processing and computer service for school purposes, including the making of schedules, the keeping and analyzing of grades and other student data, the keeping and preparing of warrants, payroll, and similar data where approved by the state board of accounts as provided below, and other personnel or services as the governing body considers necessary for school purposes.

(B) Fix and pay the salaries and compensation of persons and services described in this subdivision.

(C) Classify persons or services described in this subdivision and to adopt schedules of salaries or compensation.

(D) Determine the number of the persons or the amount of the services employed or contracted for as provided in this subdivision.

(E) Determine the nature and extent of the duties of the persons described in this subdivision.

The compensation, terms of employment, and discharge of teachers are, however, subject to and governed by the laws relating to employment, contracting, compensation, and discharge of teachers. The compensation, terms of employment, and discharge of bus drivers are subject to and governed by laws relating to employment, contracting, compensation, and discharge of bus drivers. The forms and procedures relating to the use of computer and data processing equipment in handling the financial affairs of the school corporation must be submitted to the state board of accounts for approval so that the services are used by the school corporation when the governing body determines that it is in the best interest of the school corporation while at the same time providing reasonable accountability for the funds expended.

(9) Notwithstanding the appropriation limitation in subdivision (3), when the governing body by resolution considers a trip by an employee of the school corporation or by a member of the

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governing body to be in the interest of the school corporation, including attending meetings, conferences, or examining equipment, buildings, and installation in other areas, to permit the employee to be absent in connection with the trip without any loss in pay and to reimburse the employee or the member the employee's or member's reasonable lodging and meal expenses and necessary transportation expenses. To pay teaching personnel for time spent in sponsoring and working with school related trips or activities.

(10) To transport children to and from school, when in the opinion of the governing body the transportation is necessary, including considerations for the safety of the children and without regard to the distance the children live from the school. The transportation must be otherwise in accordance with applicable law.

(11) To provide a lunch program for a part or all of the students attending the schools of the school corporation, including the establishment of kitchens, kitchen facilities, kitchen equipment, lunch rooms, the hiring of the necessary personnel to operate the lunch program, and the purchase of material and supplies for the lunch program, charging students for the operational costs of the lunch program, fixing the price per meal or per food item. To operate the lunch program as an extracurricular activity, subject to the supervision of the governing body. To participate in a surplus commodity or lunch aid program.

(12) To purchase textbooks, to furnish textbooks without cost or to rent textbooks to students, to participate in a textbook aid program, all in accordance with applicable law.

(13) To accept students transferred from other school corporations and to transfer students to other school corporations in accordance with applicable law.

(14) To make budgets, to appropriate funds, and to disburse the money of the school corporation in accordance with applicable law. To borrow money against current tax collections and otherwise to borrow money, in accordance with IC 20-48-1.

(15) To purchase insurance or to establish and maintain a program of self-insurance relating to the liability of the school corporation or the school corporation's employees in connection with motor vehicles or property and for additional coverage to the extent permitted and in accordance with IC 34-13-3-20. To purchase additional insurance or to establish and maintain a program of self-insurance protecting the school corporation and

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members of the governing body, employees, contractors, or agents of the school corporation from liability, risk, accident, or loss related to school property, school contract, school or school related activity, including the purchase of insurance or the establishment and maintenance of a self-insurance program protecting persons described in this subdivision against false imprisonment, false arrest, libel, or slander for acts committed in the course of the persons' employment, protecting the school corporation for fire and extended coverage and other casualty risks to the extent of replacement cost, loss of use, and other insurable risks relating to property owned, leased, or held by the school corporation. To:

(A) participate in a state employee health plan under IC 5-10-8-6.6 or **IC 5-10-8-6.7**;

(B) purchase insurance; or

(C) establish and maintain a program of self-insurance; to benefit school corporation employees, including accident, sickness, health, or dental coverage, provided that a plan of self-insurance must include an aggregate stop-loss provision.

(16) To make all applications, to enter into all contracts, and to sign all documents necessary for the receipt of aid, money, or property from the state, the federal government, or from any other source.

(17) To defend a member of the governing body or any employee of the school corporation in any suit arising out of the performance of the member's or employee's duties for or employment with, the school corporation, if the governing body by resolution determined that the action was taken in good faith. To save any member or employee harmless from any liability, cost, or damage in connection with the performance, including the payment of legal fees, except where the liability, cost, or damage is predicated on or arises out of the bad faith of the member or employee, or is a claim or judgment based on the member's or employee's malfeasance in office or employment.

(18) To prepare, make, enforce, amend, or repeal rules, regulations, and procedures:

(A) for the government and management of the schools, property, facilities, and activities of the school corporation, the school corporation's agents, employees, and pupils and for the operation of the governing body; and

(B) that may be designated by an appropriate title such as "policy handbook", "bylaws", or "rules and regulations".

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(19) To ratify and approve any action taken by a member of the governing body, an officer of the governing body, or an employee of the school corporation after the action is taken, if the action could have been approved in advance, and in connection with the action to pay the expense or compensation permitted under IC 20-26-1 through IC 20-26-5, IC 20-26-7, IC 20-40-12, and IC 20-48-1 or any other law.

(20) To exercise any other power and make any expenditure in carrying out the governing body's general powers and purposes provided in this chapter or in carrying out the powers delineated in this section which is reasonable from a business or educational standpoint in carrying out school purposes of the school corporation, including the acquisition of property or the employment or contracting for services, even though the power or expenditure is not specifically set out in this chapter. The specific powers set out in this section do not limit the general grant of powers provided in this chapter except where a limitation is set out in IC 20-26-1 through IC 20-26-5, IC 20-26-7, IC 20-40-12, and IC 20-48-1 by specific language or by reference to other law.

SECTION 6. IC 22-3-6-1, AS AMENDED BY P.L.1-2006, SECTION 339, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5. The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal

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1 Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the
 2 corporation enters into an independent contractor agreement with a
 3 person for the performance of youth coaching services on a part-time
 4 basis.

5 (b) "Employee" means every person, including a minor, in the
 6 service of another, under any contract of hire or apprenticeship, written
 7 or implied, except one whose employment is both casual and not in the
 8 usual course of the trade, business, occupation, or profession of the
 9 employer.

10 (1) An executive officer elected or appointed and empowered in
 11 accordance with the charter and bylaws of a corporation, other
 12 than a municipal corporation or governmental subdivision or a
 13 charitable, religious, educational, or other nonprofit corporation,
 14 is an employee of the corporation under IC 22-3-2 through
 15 IC 22-3-6. **However, an officer of a corporation who is the sole**
 16 **officer of the corporation is not an employee of the**
 17 **corporation under IC 22-3-2 through IC 22-3-6. An officer of**
 18 **a corporation who is the sole officer of the corporation may**
 19 **elect to be an employee of the corporation under IC 22-3-2**
 20 **through IC 22-3-6. If an officer makes this election, the officer**
 21 **must serve written notice of the election on the corporation's**
 22 **insurance carrier and the board. An officer of a corporation**
 23 **who is the sole officer of the corporation may not be**
 24 **considered an employee under IC 22-3-2 through IC 22-3-6**
 25 **until the notice is received by the insurance carrier and the**
 26 **board.**

27 (2) An executive officer of a municipal corporation or other
 28 governmental subdivision or of a charitable, religious,
 29 educational, or other nonprofit corporation may, notwithstanding
 30 any other provision of IC 22-3-2 through IC 22-3-6, be brought
 31 within the coverage of its insurance contract by the corporation by
 32 specifically including the executive officer in the contract of
 33 insurance. The election to bring the executive officer within the
 34 coverage shall continue for the period the contract of insurance is
 35 in effect, and during this period, the executive officers thus
 36 brought within the coverage of the insurance contract are
 37 employees of the corporation under IC 22-3-2 through IC 22-3-6.

38 (3) Any reference to an employee who has been injured, when the
 39 employee is dead, also includes the employee's legal
 40 representatives, dependents, and other persons to whom
 41 compensation may be payable.

42 (4) An owner of a sole proprietorship may elect to include the

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owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376 to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an

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owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(11) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of IC 22-3-2 through IC 22-3-6.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-33-3-35, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an

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1 approved program under IC 20-37-2-7 shall be considered a
 2 full-time employee for the purpose of computing compensation
 3 for permanent impairment under IC 22-3-3-10. The average
 4 weekly wages for such a student shall be calculated as provided
 5 in subsection (d)(4).

6 (4) The rights and remedies granted in this subsection to a minor
 7 under IC 22-3-2 through IC 22-3-6 on account of personal injury
 8 or death by accident shall exclude all rights and remedies of the
 9 minor, the minor's parents, or the minor's personal
 10 representatives, dependents, or next of kin at common law,
 11 statutory or otherwise, on account of the injury or death. This
 12 subsection does not apply to minors who have reached seventeen
 13 (17) years of age.

14 (d) "Average weekly wages" means the earnings of the injured
 15 employee in the employment in which the employee was working at the
 16 time of the injury during the period of fifty-two (52) weeks
 17 immediately preceding the date of injury, divided by fifty-two (52),
 18 except as follows:

19 (1) If the injured employee lost seven (7) or more calendar days
 20 during this period, although not in the same week, then the
 21 earnings for the remainder of the fifty-two (52) weeks shall be
 22 divided by the number of weeks and parts thereof remaining after
 23 the time lost has been deducted.

24 (2) Where the employment prior to the injury extended over a
 25 period of less than fifty-two (52) weeks, the method of dividing
 26 the earnings during that period by the number of weeks and parts
 27 thereof during which the employee earned wages shall be
 28 followed, if results just and fair to both parties will be obtained.
 29 Where by reason of the shortness of the time during which the
 30 employee has been in the employment of the employee's employer
 31 or of the casual nature or terms of the employment it is
 32 impracticable to compute the average weekly wages, as defined
 33 in this subsection, regard shall be had to the average weekly
 34 amount which during the fifty-two (52) weeks previous to the
 35 injury was being earned by a person in the same grade employed
 36 at the same work by the same employer or, if there is no person so
 37 employed, by a person in the same grade employed in the same
 38 class of employment in the same district.

39 (3) Wherever allowances of any character made to an employee
 40 in lieu of wages are a specified part of the wage contract, they
 41 shall be deemed a part of the employee's earnings.

42 (4) In computing the average weekly wages to be used in

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calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-37-2-7, the following formula shall be used. Calculate the product of:

- (A) the student employee's hourly wage rate; multiplied by
- (B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on ZIP code districts defined by the United States Postal Service according to the following groupings:

- (1) The geographic service area served by ZIP codes with the first three (3) digits 463 and 464.
- (2) The geographic service area served by ZIP codes with the first three (3) digits 465 and 466.
- (3) The geographic service area served by ZIP codes with the first three (3) digits 467 and 468.
- (4) The geographic service area served by ZIP codes with the first three (3) digits 469 and 479.
- (5) The geographic service area served by ZIP codes with the first three (3) digits 460, 461 (except 46107), and 473.
- (6) The geographic service area served by the 46107 ZIP code and ZIP codes with the first three (3) digits 462.
- (7) The geographic service area served by ZIP codes with the first three (3) digits 470, 471, 472, 474, and 478.
- (8) The geographic service area served by ZIP codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each

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specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 7. IC 22-3-7-9, AS AMENDED BY P.L.201-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of sections 6 and 33 of this chapter. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of sections 6 and 33 of this chapter. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this chapter. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

(b) As used in this chapter, "employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter the following apply:

- (1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes the employee's legal representative, dependents, and other persons to whom compensation may be payable.
- (2) An owner of a sole proprietorship may elect to include the owner as an employee under this chapter if the owner is actually engaged in the proprietorship business. If the owner makes this

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election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under section 34.5 of this chapter.

(3) A partner in a partnership may elect to include the partner as an employee under this chapter if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under section 34.5 of this chapter.

(4) Real estate professionals are not employees under this chapter if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor in the construction trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR ~~1057~~, **376**, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

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(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(8) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of this chapter.

(9) An officer of a corporation who is the sole officer of the corporation is not an employee of the corporation under this chapter. An officer of a corporation who is the sole officer of the corporation may elect to be an employee of the corporation under this chapter. If an officer makes this election, the officer must serve written notice of the election on the corporation's insurance carrier and the board. An officer of a corporation who is the sole officer of the corporation may not be considered an employee under this chapter until the notice is received by the insurance carrier and the board.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. A minor employee shall be considered as being of full age for all purposes of this chapter. However, if the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provisions of this subsection prescribing double the amount otherwise recoverable do not apply. The rights and remedies granted to a minor under this chapter on account of disease shall exclude all rights and remedies of the minor, his the minor's parents, his the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to casual laborers as defined in

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subsubsection (b), nor to farm or agricultural employees, nor to household employees, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to these employees. Also, this chapter does not apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

(e) As used in this chapter, "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom the employee claims compensation or equal wages in other suitable employment, and "disability" means the state of being so incapacitated.

(f) For the purposes of this chapter, no compensation shall be payable for or on account of any occupational diseases unless disablement, as defined in subsection (e), occurs within two (2) years after the last day of the last exposure to the hazards of the disease except for the following:

(1) In all cases of occupational diseases caused by the inhalation of silica dust or coal dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease.

(2) In all cases of occupational disease caused by the exposure to radiation, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within two (2) years from the date on which the employee had knowledge of the nature of the employee's occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to the employee's employment.

(3) In all cases of occupational diseases caused by the inhalation of asbestos dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease if the last day of the last exposure was before July 1, 1985.

(4) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1985, and before July 1, 1988, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within twenty (20) years after the last day of the last

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exposure.

(5) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1988, no compensation shall be payable unless disablement (as defined in subsection (e)) occurs within thirty-five (35) years after the last day of the last exposure.

(g) For the purposes of this chapter, no compensation shall be payable for or on account of death resulting from any occupational disease unless death occurs within two (2) years after the date of disablement. However, this subsection does not bar compensation for death:

(1) where death occurs during the pendency of a claim filed by an employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or

(2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

(j) As used in this chapter, "community" means a geographic service area based on ZIP code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by ZIP codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by ZIP codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by ZIP codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by ZIP codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by ZIP codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 ZIP code and ZIP codes with the first three (3) digits 462.

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(7) The geographic service area served by ZIP codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by ZIP codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 8. IC 27-1-6-0.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.4. As used in this chapter with respect to a corporation described in section 1(b) of this chapter, "corporate officer" or "incorporator" refers to the chief executive or chief financial officer of a municipality described in section 1(b) of this chapter.**

SECTION 9. IC 27-1-6-0.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 0.6. As used in this chapter, "municipality" has the meaning set forth in IC 36-1-2-11.**

SECTION 10. IC 27-1-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1. (a) Except as provided in subsection (b), any number of natural persons, not less than seven (7), all of whom are eighteen (18) years of age or older, at least a majority of whom are residents of the state of Indiana and citizens of the United States, may form a corporation under the provisions of this chapter for the purpose of making any kind or kinds of insurance described in any one (1) class set out in IC 27-1-5-1, other than reciprocal, farm mutual, fraternal, and assessment insurance, by complying with the provisions of this chapter.**

(b) Four (4) or more Indiana municipalities, represented by at least seven (7) incorporators, may form a corporation as a domestic mutual company under this chapter for purposes of making any kind or kinds of insurance described in any one (1) class set out in IC 27-1-5-1 (other than reciprocal, farm mutual, fraternal, and assessment insurance) available to Indiana municipalities.

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SECTION 11. IC 27-1-6-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. **(a) This section does not apply to a domestic mutual company described in section 1(b) of this chapter.**

~~(a)~~ **(b)** Except as provided in subsection ~~(b)~~, **(c)**, a domestic mutual company that organized before July 1, 1977, must maintain a surplus of not less than two hundred fifty thousand dollars (\$250,000). This subsection does not apply to a standard farm mutual insurance company that is organized under IC 27-5 (before its repeal) or IC 27-5.1.

~~(b)~~ **(c)** A domestic mutual company that organized before July 1, 1977, must maintain a surplus of not less than:

(1) seven hundred fifty thousand dollars (\$750,000), if it markets one (1) or more kinds of insurance under both Class II and Class III, other than Class II(k) insurance;

(2) one million dollars (\$1,000,000), if it markets one (1) or more kinds of insurance under Class II, including Class II(k) insurance; or

(3) one million dollars (\$1,000,000), if it markets one (1) or more kinds of insurance under both Class II and Class III, including Class II(k) insurance.

~~(c)~~ **(d)** A domestic mutual company that organized after June 30, 1977, must maintain a surplus of not less than one million two hundred fifty thousand dollars (\$1,250,000). However, when it organizes, it must:

(1) have a surplus of not less than two million dollars (\$2,000,000);

(2) for the one (1) or more kinds of insurance under Class I that it intends to market, have received applications for insurance from not less than four hundred (400) persons, each application for an amount not less than one thousand dollars (\$1,000), and have received the first year's premium due on a policy to be issued on each such application; and

(3) for the one (1) or more kinds of insurance under Class II or Class III that it intends to market, have received applications for insurance covering not less than eight hundred (800) separate risks in not less than forty (40) policies to be issued to not less than forty (40) members, and have received premiums amounting to not less than one hundred thousand dollars (\$100,000) for those policies.

~~(d)~~ **(e)** A domestic mutual company must deposit with the department in cash or in obligations of the United States:

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(1) twenty-five thousand dollars (\$25,000), if it organized before June 30, 1955;

(2) fifty thousand dollars (\$50,000), if it organized after June 29, 1955, and before March 7, 1967; or

(3) one hundred thousand dollars (\$100,000), if it organized after March 6, 1967.

This subsection does not apply to a standard farm mutual insurance company that is organized under IC 27-5 (before its repeal) or IC 27-5.1.

~~(e)~~ **(f)** If the commissioner determines that the continued operation of a domestic mutual company may be hazardous to the policyholders or the general public, the commissioner may, upon the commissioner's determination, issue an order requiring the insurer to increase the insurer's capital and surplus based on the type, volume, and nature of the business transacted.

SECTION 12. IC 27-1-6-15.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 15.1. (a) A domestic mutual company described in section 1(b) of this chapter must maintain a surplus of not less than one million two hundred fifty thousand dollars (\$1,250,000). However, when the company organizes, the company must:**

(1) have:

(A) a surplus of not less than two million dollars (\$2,000,000); and

(B) applications for insurance from not less than twenty (20) municipalities, each application for an amount not less than fifty thousand dollars (\$50,000);

(2) for the one (1) or more kinds of insurance under Class I that the company intends to market, have received:

(A) applications for insurance from not less than one hundred (100) individuals, each application for an amount not less than five thousand dollars (\$5,000); and

(B) the first year's premium due on a policy to be issued on each application; and

(3) for the one (1) or more kinds of insurance under Class II or Class III that the company intends to market, have received:

(A) applications for insurance covering not less than forty (40) policies to be issued; and

(B) premiums amounting to not less than five hundred thousand dollars (\$500,000) for the policies.

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1 (b) A domestic mutual company described in section 1(b) of this
 2 chapter shall deposit with the department, in cash or in obligations
 3 of the United States, one hundred thousand dollars (\$100,000).

4 (c) If the commissioner determines that the continued operation
 5 of a domestic mutual company described in section 1(b) of this
 6 chapter may be hazardous to the policyholders or the general
 7 public, the commissioner may, upon the commissioner's
 8 determination, issue an order requiring the insurer to increase the
 9 insurer's capital and surplus based on the type, volume, and nature
 10 of the business transacted.

11 SECTION 13. IC 27-1-12-11 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) After the
 13 department has ascertained the net reserve value of all policies (as
 14 defined in section 9 of this chapter) or the reserve liabilities (as defined
 15 in section 10 of this chapter) of any life insurance company organized
 16 and doing business in this state, the department shall notify said
 17 company of the amount or amounts thereof. Within sixty (60) days after
 18 the date of such notification, the officers of such company shall deposit
 19 with the department, solely for the security and benefit of all its
 20 policyholders, assets in an amount, invested in accordance with section
 21 2 of this chapter (except paragraph 20 of section 2(b) of this chapter)
 22 which together with the assets already deposited with the department
 23 and such additional assets as may be deposited by said company with
 24 other states or governments, pursuant to the requirements of the laws
 25 of such other states or governments in which said company is doing
 26 business, shall be not less than the lesser of the amount of such reserve
 27 value or reserve liabilities or the amount provided under subsection (f).
 28 No life insurance company organized under this article or any other law
 29 of this state shall be required to make such deposit until the amount
 30 prescribed by this subsection exceeds the amount deposited by said
 31 company under IC 27-1-6-14, ~~or~~ IC 27-1-6-15, **or IC 27-1-6-15.1.**
 32 Investments in real estate shall be deposited in the form of satisfactory
 33 evidences of ownership. The deposit requirement in relation to policy
 34 loans and bank deposits shall be considered fulfilled by the inclusion
 35 of such item in the company's annual statement, but subject to the right
 36 of the company at any time, and the obligation of the company on
 37 demand of the department, to file with the department a certificate as
 38 to the amount of such item.

39 (b) If the department in the course of the year ascertains that the net
 40 reserve value of a company's policies (as defined in section 9 of this
 41 chapter) or its reserve liabilities (as defined in section 10 of this
 42 chapter) exceeds such company's deposits as required by subsection

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(a), it may require such company within sixty (60) days to increase its deposit to the required amount.

(c) Nothing in this article shall prevent the deposit of bonds, mortgages, or other securities which meet the investment requirements of a foreign or alien state or country, to an amount not exceeding the amount of the reserves on policies issued to residents of, and to corporations doing business in, such state or country. If, pursuant to the law of a foreign or alien state or country in which an Indiana life insurance company is doing business, securities belonging to such a company are required to be deposited within the boundaries of such foreign or alien state or country, credit for the amount of such deposit, not exceeding the amount of the reserves on policies issued to residents of, and to corporations doing business in, such foreign or alien state or country, may be taken by the company as an offset against its deposits required under this article.

(d) If, pursuant to the law of a foreign or alien state or country, a life insurance company domiciled therein is not permitted a reserve credit for reserves maintained by a reinsurer foreign to such a state or country, except on the condition that the amount of such reserve be deposited with the insurance supervisory official of such state or country, a deposit credit for the amount of such reserves so deposited shall be allowed a domestic life insurance company accepting reinsurance from companies domiciled in such state or country.

(e) Any deposit of assets with the department pursuant to any law superseded by this chapter shall, prior to the first deposit date contemplated in subsection (a), be continued with the department and otherwise be subject to this section.

(f) The amount of the deposit, except as otherwise provided in subsection (a), shall be one million dollars (\$1,000,000) excluding policy loans and bank deposits, or such greater amount as the department deems necessary to protect the interests of the policyholders of a particular company by an order to the company to deposit additional amounts under this section.

(g) Each company:

(1) must report to the department each new asset acquisition to establish its eligibility for investment under the numbered categories of permissible investments under section 2 of this chapter at such regular intervals, within the time limit following each interval and on the forms as the department may require, without complying with IC 4-22-2; and

(2) when ordered by the department, shall make any additional report relating to:

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(A) the category of eligibility, the characteristics, or the amount of any investment; or

(B) the amount of the assets of the company in any category; calculated under the rules applied for annual statement purposes.

SECTION 14. IC 27-14-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) Except as provided in subsection (b), an MIHC:

(1) has and may exercise all the rights and privileges of insurance companies formed under this title; and

(2) is subject to all the requirements and regulations imposed upon insurance companies formed under this title.

(b) The exceptions referred to in subsection (a) are as follows:

(1) An MIHC does not have the right or privilege to write insurance (except through an insurance company subsidiary) and is not subject to any requirement or rule adopted under IC 4-22-2 relating to the writing of insurance.

(2) An MIHC is not subject to the deposit requirement in ~~IC 27-1-6-15(d)~~ **IC 27-1-6-15(e) or IC 27-1-6-15.1(b)**.

(3) An MIHC is not subject to any statute or rule adopted under IC 4-22-2 that is imposed upon insurance companies formed under this title to the extent that the statute or rule is in conflict with this article.

(4) An MIHC is not subject to the investment requirements under IC 27-1-12 or IC 27-1-13 that limit or restrict investments in subsidiaries.

(5) An MIHC is not subject to risk-based capital requirements under IC 27-1-36.

(6) An MIHC is not subject to a requirement under IC 27 if the commissioner determines by order or rule adopted by the commissioner under IC 4-22-2 that the requirement does not apply to the MIHC.

SECTION 15. IC 27-15-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) If a domestic mutual insurance company:

(1) is insolvent, as defined in IC 27-9-1-2(l);

(2) does not meet the **applicable** minimum surplus requirements of IC 27-1-6-15 **or IC 27-1-6-15.1**; or

(3) in the judgment of the commissioner, is in a hazardous financial condition;

its board of directors may adopt, and the commissioner may approve, any plan of conversion and amendment to the articles of incorporation that, on the effective date of the conversion, would provide for the

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former mutual to have paid-in capital stock and surplus in an amount not less than the minimum requirements of IC 27-1-6-14(c) and IC 27-1-6-14(e) and an RBC level greater than its company action RBC level.

(b) The commissioner may allow waivers or material modifications of the requirement to give any notices to members and policyholders, to obtain member approval of the proposed plan of conversion or amendment to the articles of incorporation of the converting mutual, or to distribute consideration to members if the value of a converting mutual described in subsection (a) does not in the judgment of the commissioner warrant any such notices, approvals, or distribution under the circumstances, including the expenses involved in a distribution of consideration.

SECTION 16. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "committee" refers to the interim study committee on motor vehicle towing established by this section.

(b) There is established the interim study committee on motor vehicle towing. The committee consists of the following members:

(1) Four (4) members of the house of representatives appointed by the speaker of the house of representatives, one (1) of whom shall serve as the chairperson of the committee. Not more than two (2) members appointed under this subdivision may be members of the same political party.

(2) Four (4) members of the senate appointed by the president pro tempore of the senate. Not more than two (2) members appointed under this subdivision may be members of the same political party.

(c) The committee shall study practices and charges associated with removal, towing, or storage of a motor vehicle, including:

(1) issues related to release of the motor vehicle to the motor vehicle owner;

(2) the manner in which determinations are made regarding usual and customary charges for the service rendered in a community;

(3) the actual costs of the service rendered;

(4) certification of an entity by the state as a qualified towing service; and

(5) other issues related to removal, towing, or storage of a motor vehicle determined necessary by the committee.

(d) The committee shall operate under the policies governing study committees adopted by the legislative council.

(e) The affirmative votes of a majority of the voting members

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1 appointed to the committee are required for the committee to take
2 action on any measure, including final reports.

3 (f) The committee shall report its findings and recommendations
4 to the legislative council in an electronic format under IC 5-14-6
5 before November 1, 2009.

6 (g) This SECTION expires December 31, 2009.

7 SECTION 17. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 486, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 486 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 1.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred Senate Bill 486, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 486 as printed February 20, 2009.)

FRY, Chair

Committee Vote: yeas 11, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 486 be amended to read as follows:

Page 14, between lines 19 and 20, begin a new paragraph and insert:

"SECTION 6. IC 22-3-6-1, AS AMENDED BY P.L.1-2006, SECTION 339, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same,

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using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5. The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a municipal corporation or governmental subdivision or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation under IC 22-3-2 through IC 22-3-6. **However, an officer of a corporation who is the sole officer of the corporation is not an employee of the corporation under IC 22-3-2 through IC 22-3-6. An officer of a corporation who is the sole officer of the corporation may elect to be an employee of the corporation under IC 22-3-2 through IC 22-3-6. If an officer makes this election, the officer must serve written notice of the election on the corporation's insurance carrier and the board. An officer of a corporation who is the sole officer of the corporation may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice is received by the insurance carrier and the board.**

(2) An executive officer of a municipal corporation or other

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governmental subdivision or of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers

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stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 376 to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(11) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of IC 22-3-2 through IC 22-3-6.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is

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employed, required, suffered, or permitted to work in violation of IC 20-33-3-35, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-37-2-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be

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followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of the employee's earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-37-2-7, the following formula shall be used. Calculate the product of:

- (A) the student employee's hourly wage rate; multiplied by
- (B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on ZIP code districts defined by the United States Postal Service according to the following groupings:

- (1) The geographic service area served by ZIP codes with the first three (3) digits 463 and 464.
- (2) The geographic service area served by ZIP codes with the first three (3) digits 465 and 466.
- (3) The geographic service area served by ZIP codes with the first three (3) digits 467 and 468.

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(4) The geographic service area served by ZIP codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by ZIP codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 ZIP code and ZIP codes with the first three (3) digits 462.

(7) The geographic service area served by ZIP codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by ZIP codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 7. IC 22-3-7-9, AS AMENDED BY P.L.201-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) As used in this chapter, "employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of sections 6 and 33 of this chapter. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of sections 6 and 33 of this chapter. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth under section 2.5 of this chapter. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term does not include a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to the extent the corporation enters into an

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independent contractor agreement with a person for the performance of youth coaching services on a part-time basis.

(b) As used in this chapter, "employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. For purposes of this chapter the following apply:

(1) Any reference to an employee who has suffered disablement, when the employee is dead, also includes the employee's legal representative, dependents, and other persons to whom compensation may be payable.

(2) An owner of a sole proprietorship may elect to include the owner as an employee under this chapter if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under this chapter unless the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under section 34.5 of this chapter.

(3) A partner in a partnership may elect to include the partner as an employee under this chapter if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under this chapter until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under section 34.5 of this chapter.

(4) Real estate professionals are not employees under this chapter if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(5) A person is an independent contractor in the construction

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trades and not an employee under this chapter if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(6) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR ~~1057~~, 376, to a motor carrier is not an employee of the motor carrier for purposes of this chapter. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(7) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth under section 2.5 of this chapter.

(8) A person who enters into an independent contractor agreement with a nonprofit corporation that is recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code (as defined in IC 6-3-1-11(a)) to perform youth coaching services on a part-time basis is not an employee for purposes of this chapter.

(9) An officer of a corporation who is the sole officer of the corporation is not an employee of the corporation under this chapter. An officer of a corporation who is the sole officer of the corporation may elect to be an employee of the corporation under this chapter. If an officer makes this election, the officer must serve written notice of the election on the corporation's insurance carrier and the board. An officer of a corporation who is the sole officer of the corporation may not be considered an employee under this chapter until the notice is received by the insurance carrier and the board.

(c) As used in this chapter, "minor" means an individual who has not reached seventeen (17) years of age. A minor employee shall be considered as being of full age for all purposes of this chapter. However, if the employee is a minor who, at the time of the last exposure, is employed, required, suffered, or permitted to work in violation of the child labor laws of this state, the amount of compensation and death benefits, as provided in this chapter, shall be double the amount which would otherwise be recoverable. The

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insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the disability or death of the minor, and the employer shall be wholly liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age, and who at the time of the last exposure is employed, suffered, or permitted to work at any occupation which is not prohibited by law, the provisions of this subsection prescribing double the amount otherwise recoverable do not apply. The rights and remedies granted to a minor under this chapter on account of disease shall exclude all rights and remedies of the minor, ~~his the minor's~~ parents, ~~his the minor's~~ personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of any disease.

(d) This chapter does not apply to casual laborers as defined in subsection (b), nor to farm or agricultural employees, nor to household employees, nor to railroad employees engaged in train service as engineers, firemen, conductors, brakemen, flagmen, baggagemen, or foremen in charge of yard engines and helpers assigned thereto, nor to their employers with respect to these employees. Also, this chapter does not apply to employees or their employers with respect to employments in which the laws of the United States provide for compensation or liability for injury to the health, disability, or death by reason of diseases suffered by these employees.

(e) As used in this chapter, "disablement" means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom the employee claims compensation or equal wages in other suitable employment, and "disability" means the state of being so incapacitated.

(f) For the purposes of this chapter, no compensation shall be payable for or on account of any occupational diseases unless disablement, as defined in subsection (e), occurs within two (2) years after the last day of the last exposure to the hazards of the disease except for the following:

(1) In all cases of occupational diseases caused by the inhalation of silica dust or coal dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease.

(2) In all cases of occupational disease caused by the exposure to radiation, no compensation shall be payable unless disablement,

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as defined in subsection (e), occurs within two (2) years from the date on which the employee had knowledge of the nature of the employee's occupational disease or, by exercise of reasonable diligence, should have known of the existence of such disease and its causal relationship to the employee's employment.

(3) In all cases of occupational diseases caused by the inhalation of asbestos dust, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within three (3) years after the last day of the last exposure to the hazards of the disease if the last day of the last exposure was before July 1, 1985.

(4) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1985, and before July 1, 1988, no compensation shall be payable unless disablement, as defined in subsection (e), occurs within twenty (20) years after the last day of the last exposure.

(5) In all cases of occupational disease caused by the inhalation of asbestos dust in which the last date of the last exposure occurs on or after July 1, 1988, no compensation shall be payable unless disablement (as defined in subsection (e)) occurs within thirty-five (35) years after the last day of the last exposure.

(g) For the purposes of this chapter, no compensation shall be payable for or on account of death resulting from any occupational disease unless death occurs within two (2) years after the date of disablement. However, this subsection does not bar compensation for death:

(1) where death occurs during the pendency of a claim filed by an employee within two (2) years after the date of disablement and which claim has not resulted in a decision or has resulted in a decision which is in process of review or appeal; or

(2) where, by agreement filed or decision rendered, a compensable period of disability has been fixed and death occurs within two (2) years after the end of such fixed period, but in no event later than three hundred (300) weeks after the date of disablement.

(h) As used in this chapter, "billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(i) As used in this chapter, "billing review standard" means the data used by a billing review service to determine pecuniary liability.

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(j) As used in this chapter, "community" means a geographic service area based on ZIP code districts defined by the United States Postal Service according to the following groupings:

- (1) The geographic service area served by ZIP codes with the first three (3) digits 463 and 464.
- (2) The geographic service area served by ZIP codes with the first three (3) digits 465 and 466.
- (3) The geographic service area served by ZIP codes with the first three (3) digits 467 and 468.
- (4) The geographic service area served by ZIP codes with the first three (3) digits 469 and 479.
- (5) The geographic service area served by ZIP codes with the first three (3) digits 460, 461 (except 46107), and 473.
- (6) The geographic service area served by the 46107 ZIP code and ZIP codes with the first three (3) digits 462.
- (7) The geographic service area served by ZIP codes with the first three (3) digits 470, 471, 472, 474, and 478.
- (8) The geographic service area served by ZIP codes with the first three (3) digits 475, 476, and 477.

(k) As used in this chapter, "medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under this chapter.

(l) As used in this chapter, "pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under this chapter in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products."

Renumber all SECTIONS consecutively.

(Reference is to ESB 486 as printed March 20, 2009.)

SMITH V

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